Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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CASE AND COMMENT

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The Candidates.

Political questions of every kind, except those that are also strictly legal, are entirely outside the range of this publication. But the presidency of the United States is something in which journals of every kind and degree may properly express an interest. It is sometimes said, by way of complaint, that our greatest statesmen, who best deserve the presidency, often fail to be chosen. But the list of the Presidents of this nation is one of which every citizen may well be proud. No other nation in the world's history can show so long a line of rulers or chief magistrates that can for one moment even be compared with the Presidents of the United States, either for the greatness of their capacity, or the nobility of their character. This year the choice for President is between men each of whom the nation may well delight to honor. The nation never had before it as rival candidates for its chief office two men of nobler type or of loftier ideals, both in their public and private life.

Special Circus Train.

A suit for damages to a railroad circus train because of the defective condition of the track and appliances and the negligence of railroad employees, whereby the train was ditched and the circus property destroyed, was decided on demurrer by the United States circuit court in Georgia in the case of Wilson *v.* Atlantic Coast Line R. Co. 129 Fed. 774. The court held that the railroad company was not liable under the circus contract, by the terms of which the railroad company was released and discharged from all liability for loss or damage to the circus property. It was strongly contended that this contract was against public policy, and reliance was made on the decision of the United States Supreme Court in New York Central R. Co. *v.* Lockwood, 17 Wall. 357, 21 L. ed. 627. But the doctrine there declared, which denied the right of a common carrier to stipulate for exemption from responsibility for negligence, was held in the present case to be inapplicable to a special contract with a circus company for transporting a train of cars owned by the circus company on special schedules. It held on the authority of Chicago, M. & St. P. R. Co. *v.* Wallace, 66 Fed. 506, 14 C. C. A. 257, 30 L. R. A. 161, that the railroad company was not a common carrier when hauling such special train. This is in accord with other authorities cited in the note on the subject in 30 L. R. A. 161. The

contention that this special contract was forced upon the circus company because the carrier refused to transport the show except under that contract was disposed of by holding that the railroad company was not required, as a common carrier, to take a circus train of this kind on a special schedule, and therefore the contract could not be deemed compulsory.

Illegal Possession of Fish in Transit to Other State.

The conflict between the decisions of different jurisdictions as to the constitutionality of state laws making it illegal to have possession of fish or game during the close season if they were lawfully caught outside the state has previously been discussed in CASE AND COMMENT (February, 1904). One of the states upholding such statute without regard to the fact that fish were imported from outside the state is Michigan. See People *v.* O'Neil, 110 Mich. 324, 33 L. R. A. 696, 68 N. W. 227. A recent decision by Judge Law of the circuit court of Michigan applies the doctrine of the supreme court of the state as a matter of necessity, though the judge expresses his own opinion that the state law, as applied to game or fish brought in from other jurisdictions, ought not to be held constitutional. The case before him was one in which the claim that the fish seized were articles of interstate commerce was exceptionally strong. The fish had been bought in Canada, where they were lawfully caught, for the purpose of shipping them to Boston, Massachusetts, and had been in Michigan only long enough to pay the duties upon them and pack them properly in ice for shipment. When they were seized they were in the custody of an express company, and were being loaded by it into a railroad company's express car. They were seized, therefore, while they were actually in transit to another state. Still they had been for a brief time in the fish house of the shipper, and there packed for shipment. If the fish had been packed in Canada, and had been in Michigan only as a package in transit through the state, it is not likely that any court would hold them subject to the state law prohibiting possession of fish of that character. In that case the fish would not have been at any time held in possession of their owner at any place in the state. In this case they were so held during the brief interval between the time of transit into the state and the beginning of the transit out of it. If the doctrine of the supreme court of Michigan, and of some other jurisdictions, upholding such statutes as to fish caught outside the state, shall be sustained by the United States Supreme Court, it will probably apply to the above case decided by Judge Law; but, even in that case, it may be presumed that such statutes will not be held applicable to game or fish which is merely transported through the state, and not held in possession therein except by a common carrier during the transit.

Liability for "The General Slocum" Holocaust.

The unspeakable horror of the Nation at the appalling loss of life by the burning of the General Slocum a few days since, while crowded with a Sunday school excursion, has aroused attention more keenly than ever before to the question of shipowners' liability for the safety of passengers. Immediately following the disaster the press notices were informing the public everywhere that the Federal laws limiting liability of shipowners would preclude any recovery for the fearful losses sustained. This was declared to be the case for the reason that the only remedy was against the ship or its value, and, as it was a total loss, there was nothing out of which recovery could be had, unless it might be the insurance on the vessel. If this were true, it would not be strange if an irresistible demand should compel the repeal of those laws. What the law of the subject is will be eagerly inquired by the public, including the great number of lawyers who have never had any particular reason to inform themselves on the subject.

Preliminary to the question of the limited liability law is the question of liability to an action for the death of a person. No such right of action exists by general maritime law, nor is it given by any act of Congress, unless it may be one of these mentioned below. It must, therefore, exist, if

at all, by reason of state legislation. The Harrisburg, 119 U. S. 199, 30 L. ed. 358, 7 Sup. Ct. Rep. 140; The Alaska, 130 U. S. 201, 32 L. ed. 923, 9 Sup. Ct. Rep. 461; Rundell v. Compagnie Générale Transatlantique, 49 L. R. A. 92, 40 C. C. A. 625, 100 Fed. 655. But under the laws of New York there is such a right of action when death is caused by wrongful act, and this right, given by a state law, may be enforced either in the state courts (American S. B. Co. v. Chase, 16 Wall. 522, 21 L. ed. 369), or in a court of admiralty (The Willamette, 31 L. R. A. 715, 18 C. C. A. 366, 44 U. S. App. 26, 70 Fed. 874; The Albert Dumois, 177 U. S. 240, 44 L. ed. 751, 20 Sup. Ct. Rep. 395). It is therefore clear that, as this disaster occurred in the state of New York, the law of that state, creating a right of action for death, may be enforced, unless, or except so far as, it is defeated or modified by the limited liability law of Congress.

A limitation of liability to the value of the owner's interest is provided by U. S. Rev. Stat. § 4283 (U. S. Comp. Stat. 1901, p. 2943), where the loss occurs without his "privity or knowledge," and this applies to all liabilities of the owner, even such as are created by state laws. Butler v. Boston & S. S. S. Co. 130 U. S. 527, 32 L. ed. 1017, 9 Sup. Ct. Rep. 612; Craig v. Continental Ins. Co. 141 U. S. 638, 35 L. ed. 886, 12 Sup. Ct. Rep. 97. The cases just cited also decide that this limitation of liability extends to liabilities for personal injury and death, as well as to all other kinds of loss or injury. The meaning of the words "privity or knowledge" is held in the case of Lord v. Goodall, N. & P. S. S. Co. 4 Sawy. 292, Fed. Cas. No. 8,506, to be a personal participation of the owner in some fault or act of negligence causing or contributing to the loss, or some personal knowledge or means of knowledge of which he is bound to avail himself, of a contemplated loss, or of a condition of things likely to produce or contribute to the loss, without adopting means to prevent it. There must be some personal participation or concurrence of the owner himself in some fault or negligence to constitute such privity as will exclude him from the benefit of the statute; but he is bound to exercise the utmost care to provide the vessel with a competent master and crew, and to see that the ship when she sails is in all respects seaworthy, and if, by reason of any fault or neglect in these particulars, a loss occurs, it is with his privity within the meaning of the act. But it is held in Quinlan v. Pew, 5 C. C. A. 438, 5 U. S. App. 382, 56 Fed. 111, that, if he employs a suitable agent to look after the inspection and equipment of the boat, he may be relieved under the statute, though the agent may in some particulars be negligent. In the case of The Annie Faxon, 21 C. C. A. 366, 44 U. S. App. 591, 75 Fed. 312, it was held that privity or knowledge of a defect in a steamboat boiler could not be imputed to the owner if the defect was not apparent, and was not of such a character as to be detected by the inspection of an unskilled person, and he had in good faith employed a competent person to make the inspection. The same case held that, if the government inspectors called to make an examination of the vessel failed to perform their duty, knowledge of their defective inspection could not be imputed to the owner if he had delegated the matter of the inspection to a competent employee. But where the shipowner himself undertook to examine the vessel, and failed to use proper care in doing so, it was held, in The Republic, 9 C. C. A. 386, 20 U. S. App. 561, 61 Fed. 109, that he could not claim that a loss occurring from a defective condition which he failed to discover occurred without his privity or knowledge. Where the owner of the vessel is a corporation it is held, in Craig v. Continental Ins. Co. 141 U. S. 638, 35 L. ed. 886, 12 Sup. Ct. Rep. 97, that the privity or knowledge referred to in the statute must be that of the managing officers of the corporation. The above cases give the substance of the law known as the limited liability law with respect to the shipowner's liability for the loss of passengers. This law, as above shown, applies to the loss of life as well as to other losses or injuries.

But there is another act of Congress which needs to be considered on this subject. It is the steamboat inspection act of February 28, 1871. Section 43 of that act provides that for damage to a passenger through any failure to comply with the requirements of that statute, or because of known defects or imperfections in steering apparatus or hull, the owner and master, as well as the vessel, "shall be liable to each and every person so injured" to the full

amount of the damage. This language, strictly construed, would not seem to give a right of action for death of a passenger to his personal representatives, but it seems to be assumed without question in The Annie Faxon, 21 C. C. A. 366, 44 U. S. App. 591, 75 Fed. 312, that this provision does govern cases of death as well as those of personal injuries. That case does clearly hold, however, that the owner's failure to comply with the inspection law may defeat his right to the limitation of liability. The Supreme Court of the United States, in Butler *v.* Boston & S. S. S. Co. 130 U. S. 527, 32 L. ed. 1017, 9 Sup. Ct. Rep. 612, left room for a doubt whether a failure to comply strictly with every requirement of this statute would necessarily defeat the owner's claim to a limitation of liability. In that case it held that under § 43 of this act he could not have the benefit of limited liability if the injury or loss occurred through his fault. This seems to suggest the possibility that there might be in some instances a lack of strict compliance with the statute which would not be deemed his fault. The act of Congress of June 26, 1884, § 18, which provides for the apportionment of the debts and liabilities to the individual owners, has been considered in connection with the inspection law, but was held in The Annie Faxon, 21 C. C. A. 366, 44 U. S. App. 591, 75 Fed. 312, to leave that act unrepealed.

Index to New Notes
IN
LAWYERS' REPORTS, ANNOTATED.

Book 64, Parts 1 and 2.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Accord and Satisfaction.

The insolvency of the debtor is held, in Engbretson *v.* Seiberling (Iowa) 64 L. R. A. 75, to be sufficient to create an exception to the rule that acceptance of part of an amount due cannot effect the satisfaction of the whole debt.

Assault.

One assaulted by citizens of a town for the purpose of compelling him to leave it is held, in State *v.* Evenson (Iowa) 64 L. R. A. 77, not to be bound to retreat to avoid a conflict in order to protect himself from liability to prosecution for assault, but to have the right to repel force with force so long as he uses only such force as is necessary, short of killing his assailant, even though he provoked the attack by drunkenness and disorderly conduct.

Attachment.

A fund which has, under the order of the court, been deposited with the clerk, is held, in Dale *v.* Brumbly (Md.) 64 L. R. A. 112, not to become subject to attachment by the determination of tne one who is entitled to receive it, and an order of the court that it be paid to him.

The liability of sureties on a contractor's bond is held, in Ancient Order of Hibernians *v.* Sparrow (Mont.) 64 L. R. A. 128, not to be for the direct payment of money, within the meaning of a statute authorizing an attachment in actions on contracts "for the direct payment of money."

Attorneys' Fees.

See CONSTITUTIONAL LAW.

Auctions.

An auction sale by the assignee of property of an insolvent debtor is held, in Rowley *v.* D'Arcy (Mass.) 64 L. R. A. 190, not to be rendered void by a combination between creditors of the estate to enhance the price by fictitious bids, which is not known to, or participated in by, the assignee.

Benefit Societies.

A mutual benefit society is held, in L'Union St. Jean Baptiste *v.* Ostiguy (R. I.) 64 L. R. A. 158, to have no right to sue a former member for dues for nonpayment of which it has expelled him from the society.

Bicycles.

See HIGHWAYS.

Bonds.

See ATTACHMENT.

Carriers.

A conductor of a train running between two points connected by different routes is held, in Illinois C. R. Co. *v.* Harper (Miss.) 64 L. R. A. 283, to be bound to listen to the

explanation of a passenger holding a ticket which does not specify the route she is to take, that the agent selling the ticket had directed her to take the route on which the conductor finds her, and to have no right to eject her from the train because of regulations of the carrier, unknown to her, requiring her to take the other route.

Cemeteries.

See EJECTMENT.

Commission Companies.

See RECEIVERS.

Conflict of Laws.

The refusal of a court to entertain a suit to charge a person on an unsigned representation as to the credit of another person is sustained, in Third Nat. Bank *v.* Steel (Mich.) 64 L. R. A. 119, although it is valid where made, if the statute of the place where the suit is brought provides that no action shall be brought to charge one on such a representation, unless it is in writing, signed by the party to be charged thereon.

Transactions of a broker which become the basis of a note given by his principal, and which are performed in one state where the note is delivered under directions of the principal by telephone or letter from another state, are held, in Winward *v.* Lincoln (R. I.) 64 L. R. A. 160, to be judged for the purpose of determining the validity of the consideration for the note, by the law of the place where the broker performed them.

Conspiracy.

An action on behalf of a quarry owner against members of a voluntary association of dealers in stone, of which he is not a member, who enforce a by-law of the association imposing a fine upon members who deal with those who are not members, so that members who desire to deal with nonmembers are coerced from doing so to the ruination of the business of the quarry owner, is sustained in Martell *v.* White (Mass.) 64 L. R. A. 260.

Constitutional Law.

See also PHYSICIANS AND SURGEONS.

A mechanics' lien law which provides that, in an action brought by any artisan or day laborer to enforce any lien under the act, where judgment is rendered for plaintiff, he shall be entitled to recover a reasonable attorney's fee to be fixed by the court, which shall be taxed as costs in the action, is held, in Atkinson *v.* Woodmansee (Kan.) 64 L. R. A. 325, to be unconstitutional and void, as a denial of the equal protection of the laws.

Contracts.

A contract by one selling the right to manufacture and sell a machine which he has devised, not to engage in the business of making such machines himself, nor grant anyone else the right to do so, during the life of the contract, is held, in Bancroft *v.* Union Embossing Co. (N. H.) 64 L. R. A. 298, not to be void as against public policy, where possible customers are limited in number and scattered throughout the country.

Corporations.

See TAXES.

Corpse.

A widow having by statute primary right to administer upon the estate of her intestate husband is held, in Pettigrew *v.* Pettigrew (Pa.) 64 L. R. A. 179, to have the right to control the interment of his body, and a waiver of the right to administer is held not to include a waiver of such right of control, unless it is made to do so expressly.

Deeds.

The rule that a marked line controls a

call in a deed for course and distance is held, in Elliott *v.* Jefferson (N. C.) 64 L. R. A. 135, not to be applicable, unless the marked line is so connected with the deed, either by intrinsic or extrinsic evidence, as to create a presumption that the grantor intended to adopt it.

Discovery.

In an action for damages for a negligent injury to the eyes, claimed to be permanent, it is held, in Atchison T. & S. F. R. Co. *v.* Palmore (Kan.) 64 L. R. A. 90, that a timely request for an expert physical examination of the injured organs in the usual and ordinary manner should be granted, although involving the use of drugs for dilating the pupils of the eyes, subject, however, to the limitation that the examination do not produce serious discomfort or any deleterious consequence.

Ejectment.

One who purchases a lot in a public cemetery for burial purposes, though the right of interment therein be exclusive, is held in Doe *ex dem.* Stewart *v.* Garrett (Ga.) 64 L. R. A. 99, not to acquire any title to the soil, but only a mere easement or license which will not support an action of ejectment.

Electrical Uses.

The duty of an electric light company conveying electricity by overhead wires strung through the streets of a city to keep its wires constantly insulated so as to be prepared to guard against the effect of objects coming in contact with them, regardless of the facts and causes which may bring about the contact, is held, in Hebert *v.* Lake Charles Ice L. & W. Co. (La.) 64 L. R. A. 101, to be absolute.

Evidence.

Proof of the genuineness of a disputed writing is held, in State *v.* Ryno (Kan.) 64 L. R. A. 303, to be properly made by a comparison with other writings of the same person, either admitted or clearly proved to be genuine.

Fires.

See WATERS.

Handwriting.

See EVIDENCE.

Highways.

The right of a bicyclist to hold a town liable for injuries caused by a defect making a highway unsuitable for ordinary travel is sustained in Hendry *v.* North Hampton (N. H.) 64 L. R. A. 70, under a statute making towns liable for injuries to any person traveling upon a dangerous embankment upon a highway by reason of any defect or want of repair of such embankment, or defective railings, which renders it unsuitable for travel thereon.

Land dedicated as a public highway is held, in McAlpine *v.* Chicago Great Western R. Co. (Kan.) 64 L. R. A. 85, not to revert to the dedicators because of misuse or nonuse, unless its use for the dedicated purpose has become impossible, or so highly improbable as to be practically impossible.

One who, in using the street adjoining his property as part of his lumber yard, piles lumber there in an unstable manner, is held, in Busse *v.* Rogers (Wis.) 64 L. R. A. 183, to be liable for injuries caused by its fall upon a child who, while traveling along the street, follows its inclination to play, and attempts to climb upon the pile, and thereby causes the lumber to fall.

The driver of a milk wagon, who, knowing of the existence of a manhole to a sewer, which projects above the surface of the street, attempts to turn his horse and wagon around in its vicinity without paying any attention to his course, is held, in Wheat *v.* St. Louis (Mo.) 64 L. R. A. 292, to be guilty of contributory negligence, so that, in case the wagon strikes the obstruction and is overturned to his injury, he cannot hold the city liable therefor.

Infants.

See INSURANCE.

Injunction.

An injunction to restrain a nuisance caused by the noise, smoke, and odor resulting from the operation of machine shops and boiler works in the vicinity of a private residence is sustained in Froelicher *v.* Oswald Iron Works (La.) 64 L. R. A. 228.

Insurance.

See also TAXES.

The minority of one holding a policy of insurance on a dwelling house is held, in Mead *v.* Phœnix Ins. Co. (Kan.) 64 L. R. A. 79, not to exempt him from complying with a stipulation in the policy that no suit or action for the recovery of any loss should be maintainable unless commenced within twelve months after the fire.

Where an insurance company pays to the insured a loss occasioned by the wrong of a third party, and the value of the property destroyed exceeds the amount paid by the insurance company, it is held, in Kansas City, Ft. S. & M. R. Co. *v.* Blaker (Kan.) 64 L. R. A. 81, that the insured may bring an action in his own name against the wrongdoer, and recover the full amount of the loss.

Steeple-chase riding by one who gives his occupation as a cotton merchant is held, in Smith *v.* Ætna Life Ins. Co. (Mass.) 64 L. R. A. 117, to be a voluntary exposure to unnecessary danger, within the meaning of an accident insurance policy exempting the insurer from liability for injuries resulting from such exposure.

Death caused by accidentally eating spoiled oysters is held, in Maryland Casualty Co. *v.* Hudgins (Tex.) 64 L. R. A. 349, to be within a clause in an accident insurance policy providing that the policy does not cover injuries resulting from poison, or anything accidentally or otherwise taken or absorbed.

Lateral Support.

See WATERS.

Mandamus.

Mandamus is held, in Baltimore University *v.* Colton (Md.) 64 L. R. A. 108, to be the proper remedy to compel the reinstatement of a student wrongfully expelled from a law school without notice.

Master and Servant.

An expert machinist employed by a machine company and sent to make repairs upon plants of other persons at their request as his services may be needed, and who is, while so employed, subject to the direction of the one seeking his services, although in his method of work he acts upon his own judgment, is held, in Delory *v.* Blodgett (Mass.) 64 L. R. A. 114, to be, during the time so employed, the servant of the latter, and the fellow servant of his employees, although he receives his wages from his own employer, who collects the pay for his time from those seeking his services.

An employer who undertakes to furnish a domestic servant with a lodging place is held, in Collins *v.* Harrison (R. I.) 64 L. R. A. 156, to be bound to see that it is suitable for the purpose intended, and to be liable for injuries caused to the servant by sickness due to the leaky condition of the roof.

An employee who undertakes to use defective or unsafe appliances with knowledge of their unsafe condition is held, in Neeley *v.* Southwestern Cotton Seed Oil Co. (Okla.) 64 L. R. A. 145, to assume the increased risk of danger; and the employer is held to be relieved from responsibility to the employee by reason of the latter's knowledge.

Mines.

The owner of a mining claim, who has a right to pursue a vein apexing within it beyond its side lines, is held, in St. Louis M. & M. Co. *v.* Montana Min. Co. (C. C. A. 9th C.) 64 L. R. A. 207, to be confined to operations within and upon the vein itself, and to have no right to drift a tunnel from his claim into the adjoining one for the purpose of intersecting the vein in its descent.

An entry upon a placer location to prospect for unknown lodes is held, in Clipper Min. Co. *v.* Eli Min. & L. Co. (Colo.) 64 L.

R. A. 209, to be a trespass, and to give no valid title to a lode claim, unless the placer owner has abandoned his claim, waives the trespass, or is estopped to complain of it.

Money in Court.

See ATTACHMENT.

Mortgages.

The right to dispossess, without the payment of the mortgage debt, a mortgagee of real property in possession after condition broken is denied in Stouffer *v.* Harlan (Kan.) 64 L. R. A. 320, unless his possession was acquired under such circumstances that he ought not, in equity, to be permitted to retain it.

Municipal Corporations.

See WATERS.

Negligence.

See also ELECTRICAL USES; HIGHWAYS.

One who depends for the operation of his machinery and the lighting of his place of business upon electric power supplied under contract by another party is held, in Byrd *v.* English (Ga.) 64 L. R. A. 94, to have no right of action against a third party who negligently breaks the wires by which such electric power is conveyed, thereby stopping the business for several hours, by reason of which damages are suffered.

Nuisance.

The right to conduct a hospital in such proximity to a private residence that the sights, sounds, and smells which are a necessary part of its operation become an intolerable nuisance to those dwelling in the residence is denied in Deaconess Home & Hospital *v.* Bontjes (Ill.) 64 L. R. A. 215.

Officers.

A county officer is held, in State *ex rel.* Lancaster County Comrs. *v.* Holm (Neb.) 64 L. R. A. 131, not to be required to account for and pay over to his county money received by him in payment for services performed for another, by private agreement, which are no part of the duties of his office, and which are not incompatible with, and are not included within, his official duties.

Physical Examination.

See DISCOVERY.

Physicians and Surgeons.

In an action against a physician and surgeon for negligence and unskilfulness in applying to the body of a person the device known as "Roentgen's X-rays" for the purpose of locating a foreign substance thought to be in his lungs, it is held, in Henslin *v.* Wheaton (Minn.) 64 L. R. A. 126, that the rule of liability is the same as that applied in other actions for malpractice, and one of ordinary care and prudence.

The right to require an examination and license as for a practitioner of medicine for the treatment of disease by baths, physical culture, manipulation of muscles, bones, spine, and solar plexus, and advice as to diet, is denied in State *v.* Biggs (N. C.) 64 L. R. A. 139.

Proximate Cause.

Failure to stop a street car at the destination of a passenger, by reason of which he is carried to the next street, is held, in Haley *v.* St. Louis Transit Co. (Mo.) 64 L. R. A. 295, not to be the proximate cause of his falling on a slippery pavement in attempting to return to the point where he should have been permitted to leave the car.

Receivers.

The sale by a receiver of the assets of an insolvent commission company is held, in Cincinnati Tobacco Warehouse Co. *v.* Webster (Ky.) 64 L. R. A. 219, to pass a claim for repayment of advances made to a pro-

duce buyer to enable him to procure produce to be shipped to the company for sale, together with a lien which had been expressly given by contract upon the property shipped to secure the advances.

Schools.

See MANDAMUS.

Street Railways.

A street railway company is held, in Muntz *v.* Algiers & G. R. Co. (La.) 64 L. R. A. 222, to be liable for injuries to persons, caused by the wrongful or negligent operation of the cars upon its road, whether operated by itself or by another corporation to which it had leased it.

A person who crosses an electric street-railway track in front of an approaching car which he plainly sees and distinctly hears is held, in Kansas City-Leavenworth R. Co. *v.* Gallagher (Kan.) 64 L. R. A. 344, not to be negligent, if, in view of his distance from the car, the rate of speed of its approach, and other circumstances, a reasonably prudent man would accept the hazard and undertake to cross.

Taxes.

An establishment for the collection and distribution of electricity for the purpose of power and light is held, in Williams *v.* Warren (N. H.) 64 L. R. A. 33, not to be for manufacturing purposes, within the meaning of a statute permitting towns to exempt manufacturing establishments from taxation.

A claim on a policy insuring the life of one who dies before the day on which property is to be valued for taxation is held, in Cooper *v.* Board of Review (Ill.) 64 L. R. A. 72, to be assessable under a statute providing for the assessment of claims due or to become due, although proof of death has not been made, and the insurer has sixty days after such proof in which to pay the demand.

The power to tax the exercise of a power of appointment by will is held, in *Re* Delano (N. Y.) 64 L. R. A. 279, not to be destroyed by the fact that the power of appointment was created by deed prior to the passage of the statute providing for the tax.

Waters.

The owner of logs, who permits the same to pass over a dam constructed with sufficient sluiceways to permit the free passage of the logs, but which is not equipped with piling or piers to which sheer booms may be attached, without guiding them through the sluiceways by means of sheer booms, and without taking out the sluice boards, is held, in Crookston W. P. & L. Co. *v.* Sprague (Minn.) 64 L. R. A. 193, not to be responsible for damage to the dam occasioned thereby; since a dam so constructed does not meet the requirements of the statute authorizing the construction of dams across navigable streams, and creates an unreasonable hindrance to the passage of logs.

Mere acceptance of, and payment for, the service of a water company in furnishing water for general fire purposes are held, in Ukiah City *v.* Ukiah W. & I. Co. (Cal.) 64 L. R. A. 231, not to be sufficient to establish a contract on the part of the water company to compensate the municipality for loss of property by fire, for the extinguishment of which the company negligently failed to furnish water, although the service was undertaken in compliance with a demand therefor by the municipality.

The owner of a portion of a tract of land which is saturated below the surface with an abundant supply of percolating water is held, in Katz *v.* Walkinshaw (Cal.) 64 L. R. A. 236, to have no right to remove water from wells thereon for sale, if the remainder of the tract is thereby deprived of water necessary for its profitable enjoyment.

The right to draw water from a common underground reservoir merely for the purpose of wasting it, to the injury of other landowners having equal rights to use, and means of access to, it, or of maliciously depriving them of its beneficial use, is denied in Barclay *v.* Abraham (Iowa) 64 L. R. A. 255.

The fact that a municipality takes its water supply from a lake is held, in People *v.* Hulbert (Mich.) 64 L. R. A. 265, not to justify the denial, through the police power,

of the right of an upper riparian owner to bathe in the lake.

The owners of a pier, having obtained from the state the grant of the adjacent land under water, are held, in White *v.* Nassau Trust Co. (N. Y.) 64 L. R. A. 275, to be entitled to dredge it away to any proper depth to make it commercially useful, without liability to the owner of a neighboring pier which subsides because of the slipping of the intervening state lands towards the excavation.

The state is held, in Mobile Transportation Co. *v.* Mobile (Ala.) 64 L. R. A. 333, not to abrogate its trust by granting to a municipality the shore of a tidal body of water witnin its limits.

Wills.

A residuary legatee who receives, although under protest, the amount due him under the will, is held, in Stone *v.* Cook (Mo.) 64 L. R. A. 287, to have no right, upon a mere offer to bring the amount so received into court, to contest the validity of the will, where, upon the faith of his acceptance, the special legacies provided for have been distributed.

New Books.

"The Department of Justice: Its History and Functions." By James S. Easby-Smith. (W. H. Lowdermilk & Co., Washington, D. C.) 1904. 1 Vol. $.75.

This little monograph gives the history of the Attorney-General's office, which, until 1870, constituted the Department of Justice. The history of the department since that date is added, and then the remainder of the book describes the functions of the department. An appendix gives the lists of all the officers connected with the department from the beginning.

"An Exposition of the Constitution of the United States." By Henry Flanders. 5th ed. Revised and Enlarged. (T. & J. W. Johnson & Co., Philadelphia) 1904. 1 Vol. $1.50.

This new edition is a brief, but comprehensive, treatise on the Constitution. The author's endeavor is to supply a convenient manual of instruction for the use of the country and for unprofessional readers, while making it also useful to the bar. It sets out the reasons for the different clauses of the Constitution and the judicial interpretations thereof.

"Copyright Cases." Leading decisions with statute. By Arthur S. Hamlin. Cloth $2. Sheep $2.50.

"Clark on Contracts." 2d ed. By Francis B. Tiffany. "In the Hornbook Series." 1 Vol. $3.75.

"Finch's Insurance Digest." Vol. 16. 1903. $3.

"Pharmacal Jurisprudence." By Harley R. Wiley. 1 Vol. $2.50.

"Cumming and Gilbert's Poor Laws." 2d revised ed. $5.25.

"Mason on Highways." 3d ed. Law Sheep $2.50. Buckram $2.

"The General Railroad Laws of New York." By Andrew Hamilton. 1 Vol. Buckram $2. Paper $1.50.

"Statutory Revision of the Laws of New York affecting Miscellaneous Corporations." By Andrew Hamilton. Buckram $2. Paper $1.50.

"The Insurance Law." By Andrew Hamilton. Buckram $2. Paper $1.50.

"The New Banking Law of the State of New York." By Andrew Hamilton. Buckram $2. Paper $1.50.

"The Law of Arrest in Civil and Criminal Actions." By Harvey Cortlandt Voorhees. 1 Vol. $2.

"Copyright Cases and Decisions." By Arthur S. Hamlin. 1 Vol. Cloth $2. Sheep $2.50.

"Cumming & Gilbert's Village Law." 2d ed. 1904. $3.

Recent Articles in Law Journals and Reviews.

"Legal Aspects of the Panama Question." —12 American Lawyer, 251.

"The Historic Value of Court Records." —12 American Lawyer, 253.

"Conflict of Laws."—44 Legal Adviser, 101.

"The Use and Abuse of Expert Evidence." —1 Criminal Law Journal of India, 146.

"Relation of Shareholders and Creditors

of a Corporation to Its Directors."—28 National Corporation Reporter, 662.

"Liabilities of Trades Unions and Their Members."—28 National Corporation Reporter, 620, 621.

"The Interstate Commerce Commission."—28 National Corporation Reporter, 621.

"Irregular Associations."—52 American Law Register, 409.

"The Law Relating to Deposits Received by Insolvent Banks."—52 American Law Register, 438.

"Libel—Newspaper Corporation—Malice of Reporter — Punitive Damages." — 52 American Law Register, 463.

"Liability of Insurers and Rights of Employees under Employers' Liability Insurance Policies."—59 Central Law Journal, 5.

"Recent Cases on Adulteration."—68 Justice of the Peace, 302.

"Constitutional Provision as to Titles to Laws."—10 Virginia Law Register, 106.

"The Case of Pental Island."—20 Law Quarterly Review, 236.

"Extrinsic Evidence in Aid of Interpretation."—20 Law Quarterly Review, 245.

"Future Interests in Land."—20 Law Quarterly Review, 280.

"The Present Complexity of Land Law, and Its Remedy."—20 Law Quarterly Review, 292.

"Some Aspects of the Meaning of the Word 'Concurrent' in Use with Fire Insurance Policies."—59 Central Law Journal, 62.

"The Recent Case of the Treasure Trove."—59 Central Law Journal, 65.

"The Right to Fixtures after Forfeiture."—117 Law Times, 189.

"The Assignment of Counsel."—8 Law Notes, 246.

"Alexander Hamilton's Influence on the American Law of Libel."—28 National Corporation Reporter, 692, 698.

"Power of the Legislature to Abolish a Rule of Equitable Procedure by Enacting a Remedy at Law, where no Prohibitory Words are Used in Such Enactment."—59 Central Law Journal, 44.

"Obstruction of Ancient Lights."—68 Justice of the Peace, 325.

"Circumstantial or Presumptive Evidence."—3 Madras Legal Companion, 17.

"The Law of Bank Checks—Practical Series."—21 Banking Law Journal, 437.

The Humorous Side.

A CLINCHING ANSWER.—A correspondent sends us the following answer which was filed in an action for assault and battery:—

C. G., Plaintiff,

vs.

T. H., Defendant.

And the defendant comes and acknowledges the force and injury complained of in plaintiff's declaration in said action sworn, because he says that he did draw back his fist and hit the plaintiff at the butt of the ear, and knocked him heels over head, and as he arose he gave him a tremendous kick, and turned him about three times over, and as the plaintiff arose the second time he arose a running, and defendant after him, and as the plaintiff ran he hallowed murder every jump for about two hundred yards, when defendant, being faster on foot than the plaintiff, caught him again, and did then and there cuff, flog, castigate and whip the said plaintiff until he begged and plead with him, and said in a pitiful and plaintive tone, "Don't, Tom! don't, Tom!" And promised the defendant, if he would let him alone, he would always behave himself well, and love this defendant; and after the matter was all over he came to the defendant in cool blood and agreed that if defendant would never whip him any more that he would not sue the defendant for the above thrashing, which defendant agreed to, and has not whipped him since, which agreement the defendant relies on as a bar to this action; and this, and no other, is the trespass complained of in the declaration of plaintiff, and this he is ready to verify.

W. B. M. for Defendant.

SPIRITUALISM & PERSONALITIES.—(Under this caption, a correspondent sends us the following luminous article, which seems to belong in this department):— Spiritualism Goes a Great Deal On Realizations and Personifications Of Real Personal Devils. These Personalities need not be Old Drunk, Or Old Crimenals, Or Old Murders Or Old Libertines whom we meet Daily On the Street to Our Own Disgust & Shame. We Need Not Go Down into the Graves Nor Down into Hell to Bring up the Personalities Of Devils. We are Obliged and Compelled to Meet them Daily. Men with Murder in their Hearts against God and Against all that is Good, the Wise Children of God canot be Deceived by Men Nor Devils.